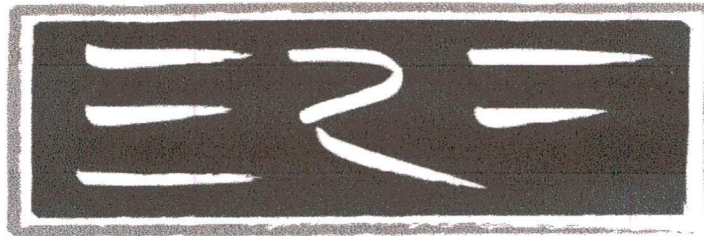


**OUR CHILDREN'S EARTH**  
Think clearly about the future.



*Ecological Rights Foundation*

December 3, 2013

Leland Stanford Junior University  
Attn: John L. Hennessy, President  
Office of the President  
Building 10  
Stanford University  
Stanford, CA 94305-2061  
E-mail: president@stanford.edu

*VIA ELECTRONIC MAIL AND CERTIFIED MAIL  
RETURN RECEIPT REQUEST*

**Re: Notice of Violation and Intent to File Suit under the Endangered Species Act and Clean Water Act**

Dear Mr. Hennessy and Leland Stanford Junior University:

I am writing on behalf of Our Children's Earth Foundation ("OCE") and Ecological Rights Foundation ("ERF") to give notice that OCE and ERF intend to file a civil action against Leland Stanford Junior University ("Stanford") for violations of the Endangered Species Act ("ESA") and Clean Water Act ("CWA"). One, Stanford is violating the ESA by unlawfully taking Central California Coast steelhead ("CCC steelhead") by (i) operating and maintaining the Searsville Booster Pump Station in a fashion that is discharging sediment and other pollutants to San Francisquito Creek and (ii) by operating and maintaining a pipeline outlet valve at the base of Searsville Dam in a fashion that is discharging sediment and other pollutants to Corte Madera Creek. Two, Stanford is violating the ESA by unlawfully taking California red-legged

frog and San Francisco garter snake by operating and maintaining the Searsville Booster Pump Station in a fashion that is discharging sediment and other pollutants to the banks or stream channel of San Francisquito Creek and in a fashion that is otherwise disturbing the habitat of the species. Three, Stanford is violating the ESA by unlawfully taking CCC steelhead through its operation of a road crossing concrete weir located near the confluence of Bear Creek and Corte Madera Creek ("the Jasper Ridge Road Crossing") that blocks CCC steelhead movement on Bear Creek (a photograph of this road crossing is attached as Exhibit A). Four, Stanford is violating the ESA by maintaining the Lagunita Diversion Dam and operating its upstream water diversions, including its diversions from Searsville Dam, the Los Trancos Diversion, and the San Francisquito Pump Station in a fashion that precludes adequate flows in the Lagunita Diversion Dam fish ladder needed for natural, unimpeded migration of steelhead. By reducing the successful migration of steelhead in its operation of the Lagunita Diversion Dam and diversions of water from upstream of the Dam, Stanford is perpetuating take of steelhead. CCC steelhead, California red-legged frog, and San Francisco garter snake are listed as protected under the ESA.

Stanford is violating the CWA by discharging sediment and other pollutants from the Searsville Booster Pump Station into San Francisquito Creek and by discharging sediment and other pollutants from a pipeline outlet valve at the base of Searsville Dam into Corte Madera Creek. Stanford is further violating the CWA by having constructed and by now maintaining fill structures in waters of the United States without a CWA section 404 permit, 33 U.S.C. § 1344. Specifically, Stanford constructed and is now maintaining the Jasper Ridge Road Crossing in San Francisquito Creek just downstream of the confluence between Bear Creek and Corte Madera Creek. Stanford constructed and is now maintaining within Corte Madera and San Francisquito Creeks (and/or their adjacent wetlands) some of the supports for the 16 inch pipeline that conveys water from the Searsville Reservoir to the Searsville Booster Pump Station and from the Searsville Booster Pump Station to Stanford's downstream water conveyance system. Stanford has constructed and is now maintaining some of the appurtenances to the Searsville Booster Pump Station (which includes discharge pipes extending from the pumps at the station) within San Francisquito Creek (and/or the Creek's adjacent wetlands) without a CWA section 404 permit. Bear Creek and San Francisquito Creek and any wetlands adjacent to these water bodies are waters of the United States. The boundaries of these creeks extend to their ordinary high watermarks.

ESA section 11(g)(2)(A)(i) requires a citizen to give notice to the Secretary and to any alleged violator of the intent to file suit sixty (60) days prior to the initiation of a civil action under 16 U.S.C. § 1540(g). This letter constitutes the required notice of the violations described below. As such, you are hereby placed on formal notice by OCE and ERF that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit, OCE and ERF intend to file suit in federal court under ESA section 11(g), 16 U.S.C. § 1540(g) against Stanford for violations of the ESA.

CWA section 505(b) requires a citizen to give notice to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur of the intent to file suit sixty (60) days prior to the initiation of a civil action under CWA section 505(a), 33 U.S.C. § 1365(a). This letter constitutes the required notice of the violations described below. As such, you are hereby placed on formal notice by OCE and ERF that, after the expiration of



sixty (60) days from the date of this Notice of Violation and Intent To File Suit, OCE and ERF intend to file suit in federal court under CWA section 505(a), 33 U.S.C. § 1365(a) against Stanford for violations of the CWA.

#### **I. IDENTITY OF PERSONS GIVING NOTICE AND THEIR COUNSEL**

This letter hereby gives notice of the names, addresses, and telephone numbers of the persons giving notice of intent to file suit, which are OCE and ERF.

OCE is a non-profit corporation dedicated to protecting the environment, including the San Francisco Bay Area. In fact, OCE's office is located in San Francisco, California. OCE promotes public awareness of domestic and international environmental impacts through information dissemination, education, and private enforcement of environmental protection statutes. OCE enforcement cases aim to achieve public access to government information, ensure proper implementation of environmental statutes and permitting, and enforce illegal violations.

OCE has an active membership of people from all over the United States with a majority of its members residing in the San Francisco Bay Area. OCE members use San Francisquito Creek, San Francisco Bay, and tributaries to both these waters for various forms of recreation, for wildlife observation and study, aesthetic enjoyment and spiritual renewal. Observation of habitat for and occurrences of the following fish, frogs, and snakes are important for these members recreational, educational, aesthetic, and spiritual enjoyment of these waters: CCC steelhead, California red-legged frogs, and San Francisco garter snakes. These members' enjoyment of CCC steelhead, California red-legged frogs and San Francisco garter snakes on San Francisquito Creek, San Francisco Bay and their tributaries is being substantially diminished by the dramatic decline in the numbers and health of these species in these waterways. The ESA and CWA violations described in this notice letter are contributing to the decline in the numbers and health of the species and thus adding to these members' injuries. The CWA violations described in this notice letter further contributing to impairment of the water quality of San Francisquito Creek, thus adding to these members' injuries caused by diminished water quality in San Francisquito Creek.

ERF is a non-profit, public benefit corporation, organized under the laws of the State of California, devoted to furthering the rights of all people to a clean, healthful and biologically diverse environment. To further its environmental advocacy goals, ERF actively seeks federal and state agency implementation of state and federal water quality related laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members. ERF's members use San Francisquito Creek, San Francisco Bay, and tributaries to both these waters for various forms of recreation, for wildlife observation and study, aesthetic enjoyment and spiritual renewal. Observation of habitat for and occurrences of the following fish, frogs, and snakes are important for these members recreational, educational, aesthetic, and spiritual enjoyment of these waters: CCC steelhead, California red-legged frogs, and San Francisco garter snakes. These members' enjoyment of CCC steelhead, California red-legged frogs and San Francisco garter snakes on San Francisquito Creek, San Francisco Bay and their tributaries is being substantially diminished by the dramatic decline in the numbers and health of these species in these waterways. The ESA and CWA violations described in this

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notice letter are contributing to the decline in the numbers and health of the species and thus adding to these members' injuries. The CWA violations described in this notice letter further contributing to impairment of the water quality of San Francisquito Creek and Corte Madera Creek, thus adding to these members' injuries caused by diminished water quality in these creeks.

OCE may be contacted at the following address:

Tiffany Schauer  
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E-mail: [tiffany@ocefoundation.org](mailto:tiffany@ocefoundation.org)

Mike Costa  
Staff Attorney  
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ERF may be contacted at the following address:

Jim Lamport  
Executive Director  
Ecological Rights Foundation  
867 "B" Redwood Drive  
Garberville, California, 95542  
Tel: (707) 923 4372

OCE and ERF have retained the following legal counsel to represent them in this matter:

Christopher A. Sproul (Bar No. 126398)  
Jodene Isaacs (Bar No. 226895)  
Environmental Advocates  
5135 Anza Street  
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Fredric Evenson  
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All communications should be addressed to legal counsel at the above address.

## **II. BACKGROUND**

### **A. Setting and Location of Searsville Dam, Searsville Reservoir, the Searsville Booster Pump Station, the Jasper Ridge Road Crossing, and the Lagunita Diversion Dam**

Searsville Dam is located on Stanford property in the San Francisco Bay Area. Searsville Dam impounds water from Corte Madera Creek (part of the San Francisquito Creek watershed), forming a reservoir known as Searsville Reservoir. Tributaries in the upper watershed that feed into Searsville Reservoir include Alambique Creek, Dennis Martin Creek, Sausal Creek, Westridge Creek, and Corte Madera Creek. Searsville Dam and Searsville Reservoir are located in San Mateo County. San Francisquito Creek is formed by the confluence of Corte Madera Creek and Bear Creek, downstream from Searsville Dam, from where it flows to San Francisco Bay. San Francisquito Creek drains a total watershed area of 47.5 square miles and is the largest stream on the western margin of San Francisco Bay. San Francisquito Creek provides important habitat for CCC steelhead, California red-legged frog, and San Francisco garter snake.

Searsville Dam, a 65-foot tall and 275 feet wide concrete block dam, was built between 1888 and 1892 by the Spring Valley Water Company for the intended purpose of providing drinking water to the San Francisco Peninsula. However, that intended purpose was never realized because the water is non-potable. Stanford took over the operation of the dam in the early 1900s. Currently, Stanford uses the water stored behind the dam as a water source for irrigation of a golf course, athletic fields, and campus landscaping and as backup for fire protection. The dam serves no other functions, i.e., the dam does not provide drinking water, flood control, or hydropower.

There is a 16 inch pipeline extending from the Searsville Dam that conveys water to the Searsville Booster Pump Station which is located approximately 2 miles below Searsville Reservoir. There is a gate outlet valve on this pipeline near Searsville Dam that Stanford opens to flush the pipeline of sediments. The Searsville Booster Pumping Station is located along (in line with) the 16 inch water conveyance pipeline that extends from Searsville Dam and continues past the Booster Pump Station to Stanford's downstream water conveyance system (which includes Felt Reservoir

and Lake Lagunita). At least portions of this pipeline are supported by fill structures built within waters of the United States.

Lagunita Diversion Dam is located approximately 2.5 miles below Searsville Reservoir on San Francisquito Creek. The Diversion Dam has a fish ladder that Stanford constructed in the 1950s and modified in 2006. This fish ladder allows some passage of steelhead; passage is hampered or prevented altogether during conditions of low flow due to flaws in the design of the ladder and Stanford's diversions of water upstream of the ladder, including diversions from Searsville Reservoir, Los Trancos Diversion and the San Francisquito Creek Pump Station, which diminish flow to the ladder.

The Jasper Ridge Road Crossing is a concrete weir built along a dirt road that crosses San Francisquito Creek shortly downstream from the confluence of Corte Madera and Bear Creeks. The Jasper Ridge Road Crossing blocks the passage of steelhead upstream and downstream during lower flow conditions that begin in the spring and continue until the next winter rains and that can also occur during winter months depending on rainfall. During such flow conditions the Road Crossing is too tall and wide for steelhead to jump over.

## **B. Precarious Status of CCC Steelhead**

The National Marine Fisheries Service ("NMFS") listed CCC steelhead as a protected threatened species under the ESA on August 18, 1997. 62 Fed. Reg. 43,937.<sup>1</sup> NMFS reaffirmed this ESA listing on January 5, 2006. 71 Fed. Reg. 834.<sup>2</sup> NMFS has designated critical habitat for CCC steelhead to include approximately 1,465 miles of stream habitat in central coastal California and an additional 386 square miles of estuarine habitat in San Pablo and San Francisco Bays. 70 Fed. Reg. 52,488 (Sept. 2, 2005). Specifically, NMFS has designated critical habitat for the CCC steelhead to include all accessible reaches of rivers (including estuarine areas and tributaries) between Cape Blanco, Oregon, and Punta Gorda, California. 64 Fed. Reg. 24,049 (May 5, 1999); 50 C.F.R. § 226.210(b). Thus, all the creeks found in the San Francisquito Creek watershed that are accessible to CCC steelhead – which includes, *inter alia*, Corte Madera Creek, Bear Creek, and San Francisquito Creek are within this critical habitat designation.

## **C. Habitat Conditions in the San Francisquito Creek Watershed**

CCC steelhead's fresh water habitat needs include: (1), cool water temperatures for successful embryo incubation and for optimum health and survival of juvenile and adult fish, (2), high dissolved oxygen content in the waters the fish inhabit, (3), suitable gravel substrate for successful spawning, (4), presence of large woody debris anchored in the fish's river habitat to provide cool deep water pools with reduced flow velocities that provide spawning habitat and refuge from predators, (5), sustained and sufficient flow to allow unimpeded migratory passage of adult and juvenile fish, and (6), consistent inundation of areas utilized for spawning, i.e., placement of clusters of eggs known as "redds" (to ensure that eggs remain

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<sup>1</sup> See NMFS website at: <http://www.swr.noaa.gov/recovery/Steelhead.htm>

<sup>2</sup> See 71 Fed. Reg. 834 (2006); NMFS website at: <http://www.nwr.noaa.gov/Publications/FR-Notices/2006/upload/71fr834.pdf>.



inundated until fry emergence). The San Francisquito Creek areas utilized by CCC steelhead are degraded such that these waters are impaired at providing these habitat attributes for CCC steelhead.

The primary cause of degraded habitat conditions in the San Francisquito Creek is the presence of Searsville Dam and Stanford's excessive water diversion of water from the watershed above Searsville Dam. Such water diversions have reduced flows in San Francisquito Creek dramatically. In addition, San Francisquito Creek has substantially less riparian vegetation than existed historically—in part due to loss of natural flow conditions needed to support such vegetation. This loss of flow and loss of riparian vegetation has seriously degraded the water quality and habitat value of the creek. With less flow, the creek is shallower, meaning it is more prone to being heated by solar radiation. Loss of riparian vegetation which shades the creek and thus reduces solar radiation has exacerbated the heating of the creek. Warmer water temperatures in the creek reduce dissolved oxygen levels as cold water inherently has greater capacity for retaining dissolved oxygen. San Francisquito Creek also has less gravel substrate and less woody debris because gravel and wood debris are trapped by Searsville Dam and kept from migrating downstream into San Francisquito Creek.

By contrast, Bear Creek is in much better condition than San Francisquito Creek with respect to CCC steelhead habitat conditions. There is not a large dam on Bear Creek blocking natural flows and the natural transport of gravel and woody debris. Bear Creek has superior riparian canopy creating more shade and keeping water temperatures cooler. Bear Creek also has a more favorable geomorphology, i.e., more channel heterogeneity that creates pools that provide favorable CCC steelhead habitat conditions such as cooler water, shelter from higher velocity flows, good spawning locations, good hiding locations from predators, and good feeding opportunities intermixed with areas of higher velocity flow that help to oxygenate waters and meet the oxygen demands of the fish.

As discussed in the following section of this Notice Letter, Stanford's discharge of sediment from the Searsville Booster Pump Station and the pipeline outlet valve at the base of Searsville Dam are further degrading Corte Madera and San Francisquito Creeks in a fashion harmful to CCC steelhead by adding more fine sediments that will tend to reduce the quality of CCC steelhead spawning areas and creating more water turbidity which, when sufficiently elevated, harms CCC steelhead. Disturbance by maintenance work crews accessing the pump station and its surrounding area to facilitate discharges from the Booster Pump Station are further harmful to California red-legged frog and San Francisco garter snake. Stanford's operation and maintenance of the Jasper Ridge Road Crossing is further harming CCC steelhead by blocking the movement of CCC steelhead into or out of Bear and Corte Madera Creeks during low flow conditions. Stanford's operation and maintenance of Lagunita Diversion Dam is further harming CCC steelhead by blocking the movement of CCC steelhead on San Francisquito Creek during low flow conditions.

### **III. VIOLATIONS OF THE FEDERAL ENDANGERED SPECIES ACT**

This letter provides notice to Stanford of OCE and ERF's intent to sue Stanford for the ESA violations identified below.



Stanford is taking species listed under the ESA at the pipeline outlet below Searsville Dam, the Searsville Booster Pump Station, the Jasper Ridge Road Crossing, and the Lagunita Diversion Dam in violation of ESA section 9 and 50 C.F.R. § 223.203. Stanford's discharge of sediment and other pollutants from the Searsville Booster Pump Station and the pipeline outlet valve at the base of Searsville Dam is taking CCC steelhead and California red-legged frog by adding more fine sediments and other pollutants to San Francisquito Creek and Corte Madera Creek that will tend to reduce the quality of CCC steelhead spawning areas and increase turbidity which, when sufficiently elevated, harms CCC steelhead and California red-legged frog. Disturbance by the activities of maintenance work crews associated with these discharges are further harmful to California red-legged frog and San Francisco garter snake by disturbing areas used by these species for nesting, foraging, and refuge in a fashion that makes these areas less conducive for these uses. This taking activity has happened on every day that Stanford has discharged sediments and other pollutants from the pipeline outlet valve at the base of Searsville Dam or from the Searsville Booster Pump Station and will continue in the future on every day that Stanford repeats such discharges. Stanford is aware of what these days are given its control over the discharges in question.

Stanford's operation and maintenance of the Jasper Ridge Road Crossing is taking CCC steelhead because the Jasper Ridge Road Crossing blocks access to and from CCC steelhead's historic habitat in Corte Madera and Bear Creeks during low flow conditions (i.e., whenever flow in Bear Creek diminishes to the point where water levels in the creek drop below the vertical and horizontal leaping ability of steelhead; such flow conditions commence every year in the springtime and last until the onset of winter rains. The point at which such conventions commence in the springtime varies annually depending on rainfall and other weather conditions. Such low flow conditions can also occur during the winter rainy season depending on rainfall). This interference with fish passage substantially diminishes the habitat available to the species and impedes the ability of CCC steelhead to move between Bear and Corte Madera Creeks and San Francisquito Creek to areas of higher water quality and/or refuge. Reducing the species' available habitat reduces the species abundance by limiting area for spawning, rearing, and refuge from predators. In addition, this reduction of habitat abundance crowds the remaining CCC steelhead population into a smaller area, specifically the lower quality habitat of San Francisquito Creek, reducing the health and increasing the mortality of the San Francisquito Creek watershed steelhead population due to reduced feeding opportunity and increased competition with other fish species. This taking activity is perpetual, i.e., has happened on every day that CCC steelhead have been an ESA-listed species and that the road crossing has been in existence and will continue every day in the future until CCC steelhead passage past the present location of Jasper Ridge Road Crossing is achieved.

Stanford's operation and maintenance of the Lagunita Diversion Dam is taking CCC steelhead because the Lagunita Diversion Dam blocks access to and from CCC steelhead's historic habitat in the upper San Francisquito Creek watershed during low flow conditions (i.e., whenever flow in San Francisquito Creek diminishes to the point where water flow in the creek is insufficient to provide enough flow to the Lagunita Diversion Dam fish ladders such that steelhead can navigate these ladders successfully; such flow conditions commence every year in the springtime and last until the onset of winter rains. The point at which such conventions commence in the springtime varies annually depending on rainfall and other



weather conditions. Such low flow conditions can also occur during the winter rainy season depending on rainfall). This interference with fish passage substantially diminishes the habitat available to the species and impedes the ability of CCC steelhead to move between habitat areas upstream and downstream from the ladders toward areas of higher water quality and/or refuge. Reducing the species' available habitat reduces the species abundance by limiting area for spawning, rearing, and refuge from predators. In addition, this reduction of habitat abundance crowds the remaining CCC steelhead population into a smaller area, specifically the lower quality habitat of lower San Francisquito Creek, reducing the health and increasing the mortality of the San Francisquito Creek watershed steelhead population due to reduced feeding opportunity and increased competition with other fish species. This taking activity is perpetual, i.e., has happened on every day that CCC steelhead have been an ESA-listed species and that the road crossing has been in existence and will continue every day in the future until CCC steelhead passage past the present location of Lagunita Diversion Dam is achieved.

These harms constitute taking of ESA-listed endangered or threatened species in violation of ESA section 9 and 50 C.F.R. § 223.203. Take of a listed species means, *inter alia*, to harass, harm, kill, trap or capture the species. 16 U.S.C. § 1532(19). An actor can take a listed species within the meaning of the ESA by killing or injuring an individual member of the species, or by engaging in an act that causes significant habitat modification or degradation or which kills or injures a member of the species, or significantly impairs essential behavioral patterns of individuals of the species, including, breeding, spawning, rearing, migrating, feeding or sheltering. 50 C.F.R. § 222.102. Stanford's operation and maintenance of the pipeline outlet valve below Searsville Dam, the Searsville Booster Pump Station, the Jasper Ridge Road Crossing, and Lagunita Diversion Dam are harassing, wounding, killing, trapping, capturing, and harming CCC steelhead, California red-legged frog, and/or San Francisco garter snake both by killing and/or injuring individuals of the species and by causing significant habitat modification or degradation to their habitat that significantly impairs the species' critical behavioral patterns, including reproduction, rearing, migrating, feeding, and sheltering—and thus has contributed to substantial decline of the species' population in San Francisquito Creek and its tributaries.

For Stanford's operation and maintenance of the pipeline outlet valve below Searsville Dam, the Searsville Booster Pump Station, the Jasper Ridge Road Crossing, and the Lagunita Diversion Dam in a fashion that takes CCC steelhead and other ESA-listed species to be legal under the ESA, Stanford must consult with NMFS and U.S. Fish and Wildlife Service and obtain an Incidental Take Permit ("ITP") under ESA section 10. 16 U.S.C. § 1539. Stanford has not obtained such a permit. As such, Stanford is in violation of ESA section 9 for taking species via its maintenance and operation of the pipeline outlet valve below Searsville Dam, the Searsville Booster Pump Station, the Jasper Ridge Road Crossing, and Lagunita Diversion in all of the manners explained above. Stanford is in further violation of ESA section 10 for failure to seek an ITP for these activities. OCE and ERF therefore put Stanford on notice of their intent to sue sixty days after the mailing of this letter.



#### IV. VIOLATIONS OF THE FEDERAL CLEAN WATER ACT

Stanford has violated and continues to violate CWA section 301(a), which prohibits the discharge of any pollutant into navigable waters (which are defined as "the waters of the United States"), except in compliance with provisions of the Act. 33 U.S.C. § 1311(a). Specifically, CWA section 301(a) prohibits the discharge of pollutants other than dredged and fill material without a National Pollutant Discharge Elimination System (NPDES) permit and the discharge of dredged and fill material without a CWA section 404 permit. 33 U.S.C. §§ 1342(a)(1), 1344. Stanford has discharged pollutants into waters of the United States without an NPDES permit and discharged fill material into waters of the United States without a CWA section 404 permit.

The Final Environmental Impact Statement For Authorization For Incidental Take And Implementation Of The Stanford University Habitat Conservation Plan (November 2012) at 68-69 describes Stanford's discharges of wastewater laden with sediments and other pollutants as follows:

At the base of Searsville Dam, a 16-inch outlet pipeline is periodically opened as part of regular inspections by DSOD to ensure that the dam could be drained in case of an emergency. The opening of this valve and pipeline discharges sediment from Searsville Reservoir with water releases and results in increases of turbidity and suspended sediment in Corte Madera and San Francisquito creeks below the dam.

...

At the in-line booster pump station approximately 2 miles downstream of Searsville Dam, flushing of the valves and pipeline are typically conducted once or twice a year at the beginning of the wet season and during the wet season...Discharges and the associated water quality impacts are typically completed within a few minutes although some discharge may extend at lower levels for up to 2+ hours at this location.

An additional discharge of sediment-laden water occurs at this location when the in-line booster pump is operating. Water originating from Searsville Reservoir is conveyed through a filter and this filter is cleaned frequently (i.e. daily, and sometimes hourly) with an automatic backwash system. The facility's backwash water is discharged through a perforated pipe to an area on the bank above San Francisquito Creek, so that sediments can settle out before the water re-enters the stream. These routine maintenance activities may impact California red-legged frogs, garter snakes, western pond turtles, and steelhead through disturbance by maintenance work crews and steelhead through temporary discharges of sediment-laden water on the bank of San Francisquito Creek.

Stanford's Habitat Conservation Plan (July 2009) further observes that: "Pipe flushing [of the Searsville diversion pipe at Searsville Dam] is accomplished by opening blow-off valves on tees from the mains, and results in discharges of sediment-laden water into either the creek or land just above it, depending on location. . . . Flushing of the pipes/valves at the base of the dam could have short-term effects on downstream water quality, which could adversely affect any steelhead or red-legged frogs that are located immediately adjacent to the pipe downstream of the dam." HCP (July 2009) at 55, 57.



Thus, as summarized by the EIS, Stanford has periodically discharged wastewater laden with sediments and other pollutants (such as vegetative debris, low dissolved oxygen, and elevated temperature) into Corte Madera Creek when it opens the valve on the 16 inch pipeline located at Searsville Dam and into San Francisquito Creek and when it flushes the Searsville Booster Pump Station lines. Wastewater that is deposited on the banks of these creeks inevitably flows into the creeks and is thus a discharge to the creeks. Stanford knows the dates of these discharge events and Stanford is hereby put on notice that each day that Stanford has so discharged wastewater from the pipeline outlet valve located at Searsville Dam onto the banks of Corte Madera Creek or directly into the Creek and each day that Stanford has so discharged wastewater from the Searsville Booster Pump Station onto the banks of San Francisquito Creek or directly into the Creek is a violation of CWA section 301(a)'s prohibition of unpermitted discharge of pollutants to waters of the United States. Each day that Stanford continues such discharges in the future will further constitute additional days of violation of CWA section 301(a).

Stanford constructed the Searsville Booster Pump Station (which OCE and ERF are defining to include the piping used in the pump station discharges described above) in 2004, which involved the placement of fill material in waters of the United States, i.e., into San Francisquito Creek and/or wetlands adjacent to San Francisquito Creek. Stanford has maintained the Searsville Booster Pump Station and the associated fill structures in waters of the United States without a CWA section 404 permit since then. Each day that Stanford placed fill materials into waters of the United States as part of construction of the Searsville Booster Pump Station and has maintained these fill materials in waters of the United States since then, has constituted a day of violation of the CWA section 301(a)'s prohibition on the unauthorized discharge of fill material.

When Stanford constructed the pipeline that conveys water from Searsville Reservoir to the Searsville Booster Pump Station and from the Searsville Booster Pump Station to Stanford's downstream water conveyance system, Stanford built various support structures for the pipeline in various locations that are within waters of the United States, specifically Corte Madera Creek, Bear Creek, and San Francisquito Creek and/or wetlands adjacent to these waters.

Stanford further placed fill materials within San Francisquito Creek, a water of the United States, to construct the Jasper Ridge Road Crossing on a date known to Stanford. Each day that Stanford placed fill materials into waters of the United States to construct the Jasper Ridge Road Crossing and has maintained these fill materials in waters United States since then, has constituted a day of violation of the CWA section 301(a)'s prohibition on the unauthorized discharge of fill material.

Stanford further placed fill materials within San Francisquito Creek, a water of the United States, to construct modifications to the Lagunita Diversion Dam in 2006 on dates known to Stanford that included a fish ladder modification. Each day that Stanford placed fill materials into waters of the United States to construct these modifications to the Lagunita Diversion Dam and has maintained these fill materials in waters United States since then, has

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constituted a day of violation of the CWA section 301(a)'s prohibition on the unauthorized discharge of fill material.

**V. NOTICE OF INTENT TO SUE STANFORD FOR VIOLATIONS OF THE ENDANGERED SPECIES ACT AND CLEAN WATER ACT**

OCE and ERF contend that Stanford has failed in the respects set forth above to comply with the requirements imposed by the ESA and CWA. ESA section 11(g), 16 U.S.C. § 1540(g) and CWA section 505, 33 U.S.C. § 1365, requires that sixty (60) days prior to the initiation of a citizen suit under the ESA and CWA, a citizen must give notice of intent to sue.

By this letter, pursuant to ESA section 11(g), 16 U.S.C. § 1540(g), and CWA section 505, 33 U.S.C. § 1365, OCE and ERF hereby put you on notice that after the expiration of sixty (60) days from the date of this Notice of Intent To File Suit, OCE and ERF intend to file an enforcement action in federal court against Stanford for violations of the ESA and CWA.

OCE and ERF intend to seek injunctive relief preventing further ESA and CWA violations, CWA civil penalties, and such other relief as is permitted by law. In addition to the violations set forth above, this notice covers all ongoing violations of the ESA and CWA and violations evidenced by information that becomes available to OCE and ERF after the date of this Notice of Intent to File Suit.

OCE and ERF are interested in discussing effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of further litigation, it is suggested that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period.

Sincerely,



Tiffany Schauer  
Our Children's Earth Foundation



Fredric Evenson  
Ecological Rights Foundation

Cc: Penny Pritzker  
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U.S. Department of Commerce  
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Sally Jewell  
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1849 C Street NW  
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J. Hennessy  
December 3, 2013

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Ren Lohoefer  
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# EXHIBIT A



